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Financing of the International Residual Mechanism for Criminal Tribunals

Construction of a new facility for the International Residual Mechanism for Criminal Tribunals, Arusha branch

Report of the Advisory Committee on Administrative and Budgetary Questions

I. Introduction

1. The Advisory Committee on Administrative and Budgetary Questions has considered the report of the Secretary-General on the construction of a new facility for the International Residual Mechanism for Criminal Tribunals, Arusha branch (A/69/734). During its consideration of the report, the Advisory Committee met via videoconference with representatives of the Secretary-General, who provided additional information and clarification, concluding with written responses received on 20 February 2015.

2. The report of the Secretary-General is submitted pursuant to General Assembly resolution 68/267 on the construction of a new facility for the Mechanism, in which the Assembly requested the Secretary-General to provide at the first part of its resumed sixty-ninth session a progress report on the implementation of the project, outlining, inter alia, the project expenditures and total costs. The Assembly also requested the Secretary-General, inter alia, to take all measures necessary to mitigate potential risks and to ensure that the construction project is monitored closely and is completed within the approved timeline and resources.

II. Progress update

3. The report of the Secretary-General on the construction of a new facility for the Mechanism, Arusha branch (A/69/734), is the fourth progress report on the project. Information with respect to the background of the project and the related resolutions of the General Assembly on the project is contained in paragraphs 1 to 8 of the report of the Secretary-General.

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Project site

4. The Secretary-General reports that, on 5 February 2014, the Supplementary Agreement to the Agreement between the United Nations and the United Republic of Tanzania concerning the Headquarters of the International Residual Mechanism for Criminal Tribunals for the Premises of the Mechanism was signed. The Supplementary Agreement, inter alia, formalized the grant of land from the Government of the United Republic of Tanzania to the United Nations and its commitment to provide temporary and permanent access roads and connection to utilities to the site of the new facility, free of charge to the United Nations. Furthermore, as required by the Supplementary Agreement, on 17 November 2014, the Government issued a certificate of occupancy to the Mechanism granting it exclusive right of occupancy of the site for a term of 99 years, free of any annual rental charges or other fees to the United Nations. The Secretary-General indicates that cooperation between the Mechanism and the Government on the project continues to be excellent. (A/69/734, paras. 10-13; see also para. 18 below on the temporary road and utilities.)

5. **The Advisory Committee reiterates its appreciation to the Government of the United Republic of Tanzania for its provision of land, access roads and the connection to utilities to the new facility at no cost to the United Nations. Furthermore, the Committee welcomes the continued cooperation between the Mechanism and the Government and trusts that it will be maintained through all phases of the project (A/68/777, para. 4).**

Environmental impact assessment

6. The Advisory Committee recalls that, in its resolution 68/267, the General Assembly noted that an environmental impact assessment would be carried out to assess the potential hazards and impact of the construction, and that the Assembly looked forward to receiving updates in this regard in the context of the next progress report. The Committee notes from the report of the Secretary-General (A/69/734, para. 18), that the environmental impact assessment for the project, which was conducted by the architectural consultant on the basis of the detailed design, concluded that no significant environmental impacts were expected to occur as a result of construction activities. According to the Secretary-General, general mitigation measures during construction will be the responsibility of the construction contractor, which, in addition to abiding by all relevant existing national regulations, will be required to submit and implement an environmental management plan. The Secretary-General does not anticipate that any additional environmental measures will need to be undertaken at United Nations expense during construction, as existing arrangements appear to be sufficient. Nevertheless, the Secretary-General indicates that mitigation measures and impacts will continue to be monitored by both the project team and the construction contractor.

Procurement activities undertaken

7. The procurement activities undertaken during the reporting period included the solicitation of the architectural and engineering consultant (the architectural consultant) and the construction services, as follows (A/69/734, paras. 16, 17, 19-23 and 43):

(a) The architectural consultant: an agreement was concluded on 26 February 2014; key elements of the design remain as presented in the second

progress report (A/67/696); and computer-generated renderings of the completed detailed design are provided in annex I to the report of the Secretary-General. The Advisory Committee notes that the design takes into full consideration the Convention on the Rights of Persons with Disabilities with respect to the provision of accessible building features;

(b) The construction services: the procurement exercise was, at the time of reporting by the Secretary-General, in its final phase and expected to be finalized shortly (see para. 23 below on the construction contract negotiation).

8. **The Advisory Committee stresses that the General Assembly has requested the Secretary-General to continue to ensure that the procurement of goods and services for the construction project is carried out in strict compliance with the existing regulations, rules and relevant provisions of General Assembly resolutions governing procurement in the United Nations (resolution 68/267, para. 9).** The Committee was informed, upon enquiry, that the procurement activities undertaken for the construction of the new facility would be covered by the audit of the Office of Internal Oversight Services (OIOS) as follows: (a) the current audit covered the pre-construction phase, including the procurement exercise for the architectural consultant; and (b) the procurement exercise for construction services would be covered by the audit of the construction phase (see also para. 16 below).

9. According to the Secretary-General, the Mechanism remains committed to continuing to ensure the application of local knowledge and capacity in the implementation of the project, a business presence in Africa being a key requirement in the process of selecting the architectural consultant (A/69/734, para. 14). In the case of the construction services, this was aimed at ensuring that the firm had experience with shipping, importation and the sourcing of labour and materials in the region, as well as with prevalent local design and construction practices, all of which are critical elements for the successful and timely completion of construction (ibid., para. 24). **The Advisory Committee encourages the Secretary-General to continue his efforts to include local knowledge and capacity in the implementation of the project as requested by the General Assembly in its resolution 68/267.**

Lessons learned

10. The Advisory Committee notes from the report of the Secretary-General that a number of lessons learned by the Secretariat from other capital projects have been applied to the project, such as (a) the conformity of the detailed design to the contractual timeline, the authorized budget and the conceptual design; (b) the recruitment of a dedicated Project Manager, who provides integrated management and day-to-day coordination of the project; and (c) the provision by the Office of Legal Affairs of wide-ranging legal support and assistance, including the use of a standard form of contract familiar to local contractors (A/69/734, paras. 15, 27 and 32).

11. **The Advisory Committee welcomes the application of some of the lessons learned from other capital projects in the planning process for the construction of the new facility at the Arusha branch. The Committee reiterates the importance of drawing lessons from the experience of other construction projects, especially the need for requisite experience and skills of any consultants engaged as well as proactive measures to mitigate delays (A/68/777, para. 8).**

Potential cooperation with other judicial institutions

12. The Advisory Committee recalls that the Mechanism met with the African Court on Human and Peoples' Rights and the African Union Advisory Board on Corruption in order to explore possible opportunities for future cooperation, including the possibility of sharing facilities, particularly a courtroom (A/68/777, paras. 9 and 10). Upon enquiry, the Committee was informed that, during the reporting period, the Mechanism had continued discussions with the entities, including the African Institute for International Law, on issues of mutual interest; however, the projects of the other entities were still at the early planning stage. As for the International Criminal Court, the Committee was informed that discussions had continued with regard to the possibility of holding trials in Arusha and that the matter was currently under judicial consideration.

13. **The Advisory Committee notes the continued efforts made by the Mechanism to seek cooperation with other judicial institutions in accordance with General Assembly resolution 67/244 B and encourages the Secretary-General to continue exploring such opportunities (A/68/777, para. 11).**

Flexible use of office space

14. In the context of its consideration of the report of the Secretary-General on a comprehensive business case for the application of flexible workspace strategies at the United Nations (A/69/749), the Advisory Committee was informed, upon enquiry, that seat-sharing strategies would not be appropriate in Arusha given the very small staffing of the Mechanism and that all regular staff (an estimated 90) and temporary staff (up to 80) during surge workload periods would need to be accommodated at the same time. The programmatic planning for the Arusha compound had, therefore, factored additional, mostly touch-down spaces to provide the required accommodation under the foreseen surge conditions. In this connection, the Advisory Committee recalls that the General Assembly had reiterated its request to the Secretary-General to apply flexible use of office space in the Arusha branch project, upon approval by the General Assembly of flexible workspace arrangements in the Secretariat (resolution 68/267, para. 7). The comments and observations of the Advisory Committee on the application of flexible workspace strategies are contained in its related report.

III. Project governance and oversight

15. Concerning the project governance and oversight (A/69/734, paras. 25-27), it is indicated that (a) the Assistant Secretary-General, Registrar, of the Mechanism is the project owner, and plays a leading role in ensuring full compliance with United Nations oversight instruments and the efficient implementation of the project; (b) the project owner is assisted by the Head of Registry, Arusha branch, who provides day-to-day leadership of the project on the ground and engages with government authorities at both the regional and national levels; and (c) the dedicated Project Manager provides integrated management and coordination of the project.

16. The Advisory Committee recalls that the General Assembly, in its resolution 67/244 B, requested the Secretary-General to entrust the Office of Internal Oversight Services with ensuring effective oversight of the implementation of the construction of the facility and with submitting to the Assembly information on key findings in the context of its annual reports. The Secretary-General reports that the first formal audit of the project, focused on planning and governance, began in

December 2014 (A/69/734, paras. 36-37). The Committee was informed, upon enquiry, that the three-stage audit process would cover pre-construction, construction and post-occupancy. In addition, according to the Secretary-General, prior to the commencement of the formal audit, the project team of the Mechanism in Arusha met periodically with the Chief Resident Auditor of the International Criminal Tribunal for Rwanda in order to ensure that OIOS was kept informed of the project and its status (ibid., para. 37). **The Advisory Committee notes the progress made in the audit by OIOS and stresses the important roles played by the project governance and oversight bodies.**

IV. Project schedule, expenditures and contingency

Project schedule

17. The Advisory Committee recalls that the project duration was shortened from the initially estimated five years and three months to four years (A/67/768, para. 15) and that the project earlier experienced a delay of approximately two months (A/68/777, para. 13). The Advisory Committee notes that the project schedule has again been revised: the date for the completion of the construction and occupancy has been postponed from late 2015 to early 2016 (A/69/734, annex II). The Secretary-General acknowledges that this reflects four additional weeks compared with the schedule contained in his previous report (A/68/724). **The Advisory Committee is concerned about the reported further delay of four weeks in the project schedule. The Committee is of the view that the Secretary-General should take all possible actions to make up for lost time. The Committee continues to stress that the Mechanism must monitor the project more closely and take measures necessary to mitigate potential risks so as to ensure that it is completed within the overall timeline (A/68/777, para. 13).**

18. According to the Secretary-General, construction work is anticipated to begin in February 2015, instead of January, with (a) the conclusion of the negotiations with the selected bidder for the construction services early in 2015; and (b) the completion of a temporary access road and connection to utilities to the site by the Government, which remained pending at the time of the reporting by the Secretary-General (A/69/734, paras. 13, 43 and 44). Upon enquiry, the Advisory Committee was informed that works for the construction of the temporary road by the Government began on 6 February 2015 and that the activities related to the connection of utilities had also been initiated. The Mechanism was given sufficient reassurances by representatives of the Government that the works would proceed and be concluded in a timely fashion. Furthermore, the negotiation between the Organization and the construction company was concluded on the same day. It was indicated to the Committee that the positive developments had further enhanced the expectation that construction would begin in February 2015. **The Advisory Committee welcomes the start of the works related to the temporary access road and connection to the utilities by the Government.**

Project budget and expenditures

19. The total resources approved by the General Assembly for the project amount to $8,787,700, inclusive of a provision for contingency in the amount of $1,050,371 (see paras. 26-30 below on contingency). It is indicated in the report of the Secretary-General that expenditures amounted to $1,194,235 as at 31 December 2014 (A/69/734, paras. 46-48 and table).

20. As shown in the table in the report of the Secretary-General (ibid., para. 47; see also table 1 below), the full budgeted amount of $636,589 under architect fees is reported as actual expenditure in 2014, no expenditure being projected for 2015. However, the Advisory Committee notes from paragraph 19 of the report of the Secretary-General that on 26 February 2014 a contract with the architectural consultant was concluded for the provision of detailed design and tender documents, and construction management services once construction is under way. Upon enquiry, the Advisory Committee was informed that (a) the amount of $636,589 under architect fees had been obligated, but had not been disbursed in full; (b) services for the construction administration and site supervision amounted to $232,410 (the contract signed with the architectural consultant in February 2014 was for full architectural services and therefore encompassed construction management services); and (c) under the terms of the contract, payment was made following the satisfactory completion of each stage of work.

21. The Advisory Committee notes that, as the construction phase of the project has yet to start, the obligated amount of $232,410 for construction management services under architect fees will be disbursed only after the start of the construction in 2015. Based on the information received, it was not clear to the Committee what were the levels of actual disbursements for 2014 and obligations. The Committee therefore requested a revised table to reflect disbursements and obligations (see table 1).

Table 1
Disbursements and obligations, 2014
(United States dollars)

		Expenditure			*Projected expenditure from January 2015 until completion of the project*	
Description	*Approved*[a]	*2013*	*2014 actual disbursements*	*2014 obligations to be disbursed in 2015*		*Total*
Construction	6 365 887	–	2 912	–	6 362 975	6 365 887
Architect and project management						
Architect fees[b]	636 589	–	399 222	237 367	–	636 589
Project supervision and management[c]	635 800	155 919	166 560	–	313 321	635 800
Travel[d]	99 086	12 396	47 688	20 491	18 511	99 086
Subtotal	**1 371 475**	**168 315**	**613 470**	**257 858**	**331 832**	**1 371 475**
Total project cost	**7 737 362**	**168 315**	**616 382**	**257 858**	**6 694 807**	**7 737 362**
Contingency[e]	1 050 371	–	–	151 680	898 691	1 050 371
Overall costs (inclusive of contingency)	**8 787 733**	**168 315**	**616 382**	**409 538**	**7 593 498**	**8 787 733**

[a] Approved budget as presented in A/67/696, annex II.
[b] Reflects the cost of hiring an external architectural consultant firm to produce detailed construction documents, perform construction administration duties and assume the responsibility of architect of record.
[c] Reflects the cost of hiring a project manager for day-to-day management and coordination of the project activities.
[d] Reflects the cost of travel of staff between New York, The Hague and Arusha to provide technical assistance to the project.
[e] Calculated at 15 per cent of the construction costs and architect fees (which is a percentage of the construction costs).

22. **Moreover, a related matter is the amount of $151,680 charged to the project contingency provision to cover the higher-than-budgeted cost for architect fees (see para. 27 below). The Advisory Committee believes that it is not appropriate at this stage to charge the amount of $151,680 to the contingency provision (see also paras. 28 and 29 below).**

23. With respect to the resources required for the remaining period of the project until its completion, the Secretary-General indicated that, as negotiations with the construction contractor had not yet been concluded at the time of reporting, he was not in a position to provide the projected amount of the construction contract. However, on the basis of planned negotiation strategies, the Secretary-General expected that the contract would be awarded within the overall authorized project budget (A/69/734, para. 49). The Advisory Committee requested an update on the status of the negotiations and was informed that the negotiations with the proposed construction company had been successfully concluded on 6 February 2015 and that it was anticipated that the contract would be signed expeditiously. **The Advisory Committee, therefore, requests that the Secretary-General provide the most up-to-date information on the construction contract and the related cost to the General Assembly at the time of its consideration of the report of the Secretary-General (A/69/734).**

24. The Advisory Committee further requested assurances concerning mitigation measures against potential cost escalations. The Advisory Committee was informed that the Mechanism had taken measures to mitigate the risk of potential cost escalations, such as (a) the use of the United States dollar instead of the local currency as the currency for both the architectural and construction services contracts to reduce the risk of cost escalation due to currency exchange fluctuations; and (b) the use of a lump sum fixed-price contract for the construction services to reduce the risk of cost escalations. It was also informed that an amount equivalent to 4 per cent per annum for overall changes in the general market and specific costs in the construction trade was included in the approved budget. The project may however be subject to several additional risks outside the direct control of the Organization, including the escalation of cost beyond the 4 per cent per annum; escalation of prices of imported materials, such as mechanical, fire-fighting and electrical equipment, which may not be available locally; and any additional costs that could not reasonably have been foreseen. It was further indicated to the Committee that the 15 per cent overall contingency provision in the project was designed, partially, to mitigate risks that were not reasonably foreseeable, including an unexpected spike in the prices of raw materials, or, generally, architectural and construction market conditions which may be difficult to predict.

25. The Advisory Committee recalls that when presenting the detailed cost estimates of the project to the General Assembly at the first part of its resumed sixty-seventh session, the Secretary-General stated that (a) the total cost of the project was estimated at $7,737,362, inclusive of construction costs, site works, architect fees, project supervision and management and travel of staff to provide technical assistance; and (b) that estimate did not include a project contingency of 15 per cent ($1,050,371). According to the Secretary-General, on the basis of lessons learned from the Organization's capital projects in recent years, the contingency would be required and would serve to cover unforeseen project conditions, such as field conditions, errors and omissions by the architect or other unexpected contractual issues. The Secretary-General recommended that this

approach be applied to the project, on the understanding that any unspent balance of the contingency would be returned to Member States at the completion of the project (A/67/696, paras. 50-51).

Project contingency

26. The Advisory Committee requested information with respect to the project contingency, which, in its view, should be separate from the project budget approved for the construction. The Committee was provided with two tables (tables 2 and 3 below). **The Committee notes that the contingency provision is referred to as "approved contingency budget" in footnote a to table 3 below and points out that the project contingency provision is not part of the project budget and should not be assumed to be such (see also para. 25 above and para. 28 below).**

Table 2
Expenditure for the period 2013-2015 (exclusive of contingency)
(United States dollars)

Description	*Approved*[a]	*Actual expenditure*		*Projected expenditure from January 2015 to completion of project*	*Total*
		2013	*2014*		
Construction	6 365 887	0	2 912	6 362 975	6 365 887
Architect and project management					
Architect fees[b]	636 589	0	636 589	0	636 589
Project supervision and management[c]	635 800	155 919	166 560	313 321	635 800
Travel[d]	99 086	12 396	68 179	18 511	99 086
Subtotal	**1 371 475**	**168 315**	**871 328**	**331 832**	**1 371 475**
Total project cost (exclusive of contingency)	**7 737 362**	**168 315**	**874 240**	**6 694 807**	**7 737 362**

[a] Approved budget as presented in A/67/696, annex II, exclusive of contingency.
[b] Reflects the cost of hiring an external architectural consultant firm to produce detailed construction documents, perform construction administration duties and assume the responsibility of architect of record. It should be noted that, in addition to the total amount budgeted, an amount of $151,680 was spent for this item from contingency (see table 3).
[c] Reflects the cost of hiring a project manager for day-to-day management and coordination of the project activities.
[d] Reflects the cost of travel of staff between New York, The Hague and Arusha to provide technical assistance to the project.

Table 3
Breakdown of contingency provisions and expenditure for the period 2013-2015
(United States dollars)

Description	*Approved contingency*[a]	*Actual contingency expenditure*		*Total remaining contingency*
		2013	*2014*	
Construction[b]	954 883	–	–	898 691
Architect and project management[b]				
Architect fees	95 488	–	151 680	–
Project supervision and management	–	–	–	–
Travel	–	–	–	–
Subtotal	**95 488**	**–**	**151 680**	**–**
Total	**1 050 371**	**–**	**151 680**	**898 691**

[a] Approved contingency budget as presented in A/67/696, annex II.
[b] Calculated at 15 per cent of the construction costs and architect fees.

27. The Secretary-General indicates that, of the total expenditure of $1,194,235 as at 31 December 2014, an amount of $151,680 was charged to the project's contingency provision to cover the higher-than-budgeted costs for architect fees that resulted from the competitive tender process (A/69/734, para. 48). Upon enquiry, the Advisory Committee was informed that, although the value of the contract for the architectural and engineering consultancy services was higher than the estimated budget compiled before the tender process, the fees were reasonable, according to the Secretariat, for the required scope of services and a best-value-for-money recommendation was made in accordance with the procurement guidelines of the Organization. The commercial evaluation indicated that the bid of the selected architectural and engineering consultant was also consistent with the prevailing market conditions. **The Advisory Committee points out that, as shown in tables 2 and 3 above, the actual amount granted for the architectural and engineering consultancy services exceeds not only the provision for architect fees under the construction budget ($636,589), but also the provision under the contingency ($95,488). The Committee is, therefore, concerned over the higher-than-budgeted amount awarded for the architectural and engineering consultancy services. The Committee questions the budgetary accuracy and planning in the budget formulation process and stresses the need for improvement.**

28. The Advisory Committee has made comments and observations on issues related to project contingency and management, in particular in the context of the strategic heritage plan, based on the lessons learned from the implementation of the capital master plan (see A/68/585, paras. 73-81). Concerning managing contingency provisions and the relationship between contingency and project risks, the Committee recalls that, according to the Board of Auditors, a contingency is a specific budgetary provision which is allocated so that a project can quickly address the cost impact of project risks, should they arise, without needing to delay the project and negotiate increased funding. However, it is crucial that the contingency funding is not used as a device to absorb general increases in project costs and that how and when such provisions have been used are clearly reported. Furthermore,

according to the Board of Auditors, good practice dictates that, prior to the approval of a major project, the level of contingency required is calculated based on the types of risk which may emerge and the cost of mitigation.[1] The Board has observed that the key differences between United Nations projects and what the Board understands as best practice are the following: (a) the use of contingency funds should be approved transparently by a governing body, such as a steering committee, not by the project; and (b) the use of the contingency should not be assumed, and should be approved only to mitigate the specific risk it was established for. If no such risks arise, the funding should be returned at the end of the project (ibid., paras. 77 and 78). **The Advisory Committee recommends that the General Assembly request the Secretary-General to follow the best practice as recommended by the Board of Auditors with respect to project contingency provisions in future capital projects. As for the ongoing project for the Mechanism, the Advisory Committee is of the view that, since the project contingency provision is calculated at 15 per cent of the construction cost, rather than linked to individual risks as the best practice dictates, it is a matter of principle that the Secretary-General should identify mitigation measures before charging any higher-than-budgeted amounts to the project contingency provision.**

29. **The Advisory Committee has repeatedly expressed its expectation that project costs will be met from within the approved resources for the construction of the new facility for the Mechanism, in order to obviate the need for utilizing contingency provisions (A/68/777, para. 14, and A/67/768, para. 17). The Committee notes with concern that the Mechanism charged the higher-than-budgeted architect fees to the project contingency provision at the early stage of the project, when possibilities for absorbing the higher-than-budgeted amount still exist. The Committee is of the view that it is not appropriate to charge the amount to the contingency provision at this stage. The Committee, therefore, recommends that the General Assembly request the Secretary-General to make every effort to absorb the higher-than-budgeted amount related to the architect fees without charging it to the project contingency provision.**

30. **Considering the remaining phases of the project, the Advisory Committee recommends that the General Assembly request the Secretary-General (a) to identify all mitigation measures with a view to absorbing cost escalations within the project construction budget; (b) to refrain, to the maximum extent possible, from charging cost escalations to the contingency provision; and (c) to make every effort to ensure that the project will be completed within the budget approved for the construction without recourse to the contingency provision (see also para. 25 above).**

Utilization of useable furniture and equipment

31. With respect to the utilization of useable furniture and equipment of the International Criminal Tribunal for Rwanda and the International Tribunal for the Former Yugoslavia, the Advisory Committee recalls that the General Assembly has encouraged the Secretary-General to continue to explore the possibilities for the use

[1] According to the Secretary-General, "risks will be quantified to assess whether the contingency and the amount budgeted will be adequate" (A/67/696, para. 45).

of such furniture and equipment and to report thereon in the context of future progress reports (resolution 68/267, para. 6). The Secretary-General reports that, owing to the proximity of the International Criminal Tribunal for Rwanda to the new facility and its nearer closure date, the Mechanism and the Tribunal have already identified certain furniture, such as shelving, and equipment in the areas of security and information and communications technology that may be able to be transferred to the new facility (A/69/734, para. 50). **The Advisory Committee encourages the Secretary-General to continue to explore such possibilities as requested by the General Assembly.**

32. **In addition, the Advisory Committee notes that the Secretary-General does not provide information on the value of the assets identified from the International Criminal Tribunal for Rwanda for reuse, or information on efforts undertaken to identify assets from the International Tribunal for the Former Yugoslavia. The Advisory Committee recommends that the General Assembly request the Secretary-General to provide the value of the assets identified in his next progress report to the Assembly.**

V. Conclusion and recommendations

33. **The Advisory Committee recommends that the General Assembly take note of the report of the Secretary-General, taking into account its comments and observations in the preceding paragraphs.**